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No. 21]

NEW DELHI, SATURDAY, SEPTEMBER 7, 1985/BHADRA 16, 1907

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में
रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a
separate compilation

भाग II—खण्ड 3—उप-खण्ड (iii) PART II—Section 3—Sub-section (iii)

(संव राज्य क्षेत्र प्रशासनों को छोड़कर) केन्द्रीय अधिकारियों द्वारा जारी किए गये आदेश और अधिसूचनाएं
Orders and Notifications issued by Central Authorities (other than Administrations of
Union Territories)

भारत निर्वाचन आयोग

प्रादेश

नई दिल्ली, 7 अगस्त, 1985

आ. अ. 51.—निर्वाचन आयोग का समाधान हो गया है कि नौचे के सारण के स्तम्भ (2) में यथा-विविष्ट निर्वाचन प्रवेश विधान सभा के निर्वाचन के लिए जो स्तम्भ (3) में विनिर्दिष्ट निर्वाचन-क्षेत्र से गुज़रा है, स्तम्भ (4) में उनके नामों विनिर्दिष्ट निर्वाचन पड़ने वाले रक्षकों, लोक प्रति-निधित्व अधिनियम, 1951 तथा तद्वत् बनाए गए नियमों द्वारा अवेक्षित उक्त सारण के स्तम्भ (5) में यथा उपरिष्ठित रूप में अपने निर्वाचन व्ययों का कोई भी लेखा वाखिल करने में असफल रहे हैं;

और उक्त व्ययव्ययों ने सम्यक् सूचना दिए जाने पर भी उक्त असफलता के लिए या तो कोई कारण अथवा स्पष्टकरण नहीं दिया है या उनके द्वारा दिए गए व्ययव्ययों पर, यदि कोई हो, विचार करने के पश्चात् निर्वाचन आयोग का यह समाधान हो गया है कि उनके पास उक्त असफलता के लिए कोई पर्याप्त कारण या न्यायोचित्य नहीं है;

अतः अब, निर्वाचन आयोग उक्त अधिनियम की धारा 10-क के अन्वय में नौचे के सारण के स्तम्भ (4) में विनिर्दिष्ट व्यक्तियों को संसद के किसी भी सदन के या किस राज्य के विधान सभा अथवा विधान परिषद् के सदस्य चुने जाने और होने के लिए इस प्रादेश के तारख से तन वर्ष के काला-वधि के लिए निरहित घोषित करता है —

सारणी				
क्र.सं.	निर्वाचन का विवरण	निर्वाचन क्षेत्र का क्र. नं. और नाम	अभ्यर्थी का नाम व पता	निर्वाचन का कारण
(1)	(2)	(3)	(4)	(5)
1.	हिमाचल प्रदेश विधान सभा का साधारण निर्वाचन, 1985	4-जुब्बल कोटखर्दी	श्री प्रकाश चन्द, गांव मेंहृद, डाकखाना डोब, तह 0 नूरपुर, जिला शिमला (हिमाचल प्रदेश)	लेखा दाखिल नहीं किया।
2.	-तदेव-	5-चौपाल	श्री भुविन्दर सिंह गांव नगी, डिफेंस पुर, तह 0 नूरपुर, जिला शिमला (हिमाचल प्रदेश)	-तदेव-
3.	-तदेव-	21-बिलासपुर	श्री नरेन्द्र कुमार पण्डित, मुपुत्र श्री सोमनाथ, मकान एच दुकान नं. 89 ए, मैन मार्केट, बिलासपुर (हिमाचल प्रदेश)।	-तदेव-
4.	-तदेव-	22-धुमारखी	श्री रूप सिंह, मुपुत्र बोधरं राम, गांव बान्त—भोपराय, तह 0 धुमारखी, जिला बिलासपुर (हिमाचल प्रदेश)	-तदेव-
5.	-तदेव-	28-भबौन्ता	श्री लेख राम, गांव नारकर, पो 0 नाडा, तह. बड़सर, जिला हमरपुर (हिमाचल प्रदेश)।	-तदेव-
6.	-तदेव-	34-नूरपुर	श्री प्रंथम सिंह, गांव और डाकखाना ग्योरा, तह. नूरपुर, जिला कांगड़ा (हिमाचल प्रदेश)।	-तदेव-
7.	-तदेव-	42-शाहपुर	श्री करम सिंह, गांव डाकखाना देत, तह 0 और जिला कांगड़ा (हिमाचल प्रदेश)।	-तदेव-
8.	-तदेव-	-तदेव-	श्री हंस राज, गांव और डाकखाना दरमन, तह. और जिला कांगड़ा (हिमाचल प्रदेश)	-तदेव-
	-तदेव-	63-बस्ह (अ. जा.)	श्री अनन्त राम, नागचाला, डाकखाना बडसु, तह. सयर, जिला मण्डी (हिमाचल प्रदेश)।	-तदेव-

1	2	3	4	5
10.	हिमाचल प्रदेश विधान सभा का साधारण निर्वाचन, 1985	63-बन्धु मजरा —तदेव—	श्री करम सिंह, गांव केहर, डाकखाना राजगढ़, तह. सदर, जिला मण्ड. (हिमाचल प्रदेश)	सेवा बाधित नहीं किया।
11.	—तदेव—	65-धरमपुर	श्री राम नाथ, गांव सन्तोषा, डाकखाना देव वरारता, तह. स. सरकाघाट, जिला मण्ड. (हिमाचल प्रदेश)।	—तदेव—
12.	—तदेव—	68-मण्डा	श्री पृथ्वी राज शर्मा मार्फत लखनपाल, टायर एण्ड सर्विसिंग, शिमला रोड, मण्डा (हिमाचल प्रदेश)।	—तदेव—

[सं. 76/हि. प्र.-वि. सं./85]

प्रादेश से,
भार. पी. भस्मा, सचिव

ELECTION COMMISSION OF INDIA

ORDER

New Delhi, the 7th August, 1985

O.N. 51.—Whereas the Election Commission is satisfied that the contesting candidates specified in column (4) of the Table below at the election to the Himachal Pradesh Legislative Assembly as specified in column (2) and held from the constituency correspondingly specified in column (3) against their names have failed to lodge accounts of their election expenses, as shown in column (5) of the said Table, as required by the Representation of the People Act, 1951 and the rules made thereunder;

And whereas the said candidates have either not furnished any reason or explanation for the said failure even after due notice or the Election Commission, after considering the representations made by them, if any, is satisfied that they have no good reason or justification for the said failure;

Now, therefore, in pursuance of section 10A of the said act the Election Commission hereby declares the persons specified in column (4) of the Table below to be disqualified for being chosen as, and for being, a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State for a period of three years from the date of this order.

TABLE

S.No.	Particulars of election	S.No. & name of constituency	Name and address of the candidate	Reason for disqualification
1.	General Election to the Himachal Pradesh Legislative Assembly, 1985	4—Jubbal Kothkhair	Shri Parkash Chand, Village Mehand, P.O., Dochi, Tehsil Jubbal, District Simla (H.P.)	Account not lodged
2.	-do-	5—Chopal	Shri Bhupinder Singh, Village & P.O. Jhiknipur, Tehsil, Chopal, Distt. Simla (H.P.)	-do-
3.	-do-	21—Bilaspur	Shri Narinder Kumar Pandit, S/o Shri Som Nath, House-cum-shop No. 89A, Main Market, Bilaspur (H.P.)	-do-
4.	-do-	22—Ghumarwin	Sh. Rup Singh, S/o Sh. Chaudhari Ram, Village Bani-Bhopra, Tehsil Ghumarwin, Distt. Bilaspur (H.P.)	-do-
5.	-do-	28—Nadaunta	Sh. Lekh Ram, Village Narkar, P.O., Nara, Tehsil Barsar, Distt. Hamirpur, (H/P.)	-do-

1	2	3	4	5
6.	General Election to the Himachal Pradesh Legislative Assembly,	34—Nurpur	Shri Pritam Singh, Village & P.O. Giora Tehsil Nurpur, Distt. Kangra (H.P.)	Account not lodged
7.	-do-	47—Shahpur	Sh. Karam Singh, Village & P.O. Rait, Tehsil & Distt. Kangra (H.P.)	-do-
8.	-do-	-do-	Shri Hans Raj, Village & P.O. Darman, Tehsil & Distt. Kangra (H.P.)	-do-
9.	-do-	63—Balh (SC)	Sh. Anant Ram, Village Nagchala, P.O. Badsu, Teh. Sadar, Distt. Mandi (H.P.)	-do-
10.	-do-	-do-	Sh. Karam Singh, Village Kehar, P.O. Rajgarh, Teh. Sadar, Distt. Mandi (H.P.)	-do-
11.	-do-	65—Dharampur	Sh. Ram Nath, Village Sandoa, P.O. Dev Darta, Teh. Sarkaghat, Distt. Mandi (H.P.)	-do-
12.	-do-	68—Mandi	Sh. Prithvi Raj Sharma C/o C/o Lakhan Pal, Tyre & Servicing, Simla Road, Mandi (H.P.)	-do-

[No. 76/H.P.-LA/85]

By Order

R. P. BHALLA, Secy.

नई दिल्ली, 16 अगस्त, 1985

आंक 52:— 1985 का निर्वाचन अधिनियम 1 में पञ्जाब तथा हरियाणा उच्च न्यायालय स्थित चण्डीगढ़ के तारीख 31 मई, 1985 के निर्णय को लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) का धारा 106 के अनुसरण में निर्वाचन आयोग प्रकाशित करता है।

[सं. 82/हरि० सी० सं०/1/85]

आदेश से,

आर० पी० भल्ला सचिव

New Delhi, the 16th August, 1985

O.N. 52.—In pursuance of section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the judgment dated 31st May, 1985 of the High Court of Punjab and Haryana at Chandigarh, in Election Petition No. 1 of 1985.

[No. 82/HN-HP/1/85]

By Order,

R. P. BHALLA, Secy.

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CIVIL MISC. SIDE

ELECTION PETITION NO. 1 OF 1985

1. Maha Singh S/o Prithi, resident of village Chhatehra-Bahadurpur, Tehsil and District Sonapat.
2. Ved Singh S/o Ram Sarup, resident of village Pipli-Khera, Tehsil Gannaur, District Sonapat.

—Petitioners.

Versus

Dharam Pal Singh son of Amir Singh, resident of House No. 515, Ward No. 4, Gohana, District Sonapat.

—Respondent.

Election Petition under Section 81 read with sections 84 and 100 of the Representation of People Act, 1951 praying

that the election of the respondent be declared void on the grounds mentioned in the petition and the costs of the petition be awarded to the petitioners.

Dated, the 31st May, 1985

PRESENT :

The Hon'ble Mr. Justice K. S. Tiwana.

For the Petitioners : Mr. Balwant Singh Malik, Advocate with Mr. S. V. Rathee, Advocate.

For the Respondent : Mr. H. L. Sibal, with Mr. H. S. Hooda and Mr. R. K. Handa and Mr. Ramesh Hooda, Advocates.

JUDGMENT

K. S. Tiwana, J.—In the elections held in December, 1984, to the House of People, 33 persons filed nomination papers offering themselves as candidates from 4-Sonepat Parliamentary Constituency. According to the election programme announced vide Government Notification dated 20th of November, 1984, the last date for filing the nomination papers was 27th of November, 1984. Scrutiny of the nomination papers was to be done on 28th of November, 1984. The last date of withdrawal of the nomination was 30th of November, 1984 and the poll was to take place on 24th of December, 1984.

2. Among others, Shri Charan Singh, President of the Lok Dal/DMKP, former Prime Minister of India, also filed his nomination papers to contest as a candidate from this constituency. He filed four nomination papers, which are Exhibits P.1, P.2, P.3 and P.4. In all these four nomination papers the column meant for declaration of age by the candidate was left blank. At the time of scrutiny of the nomination papers on 28th of November, 1984 before the Returning Officer, Shri Mukhtiar Singh proposer of Shri Dharam Pal Singh respondent and Shri Om Parkash, one of the candidates, raised objections about the omission of the declaration of age from the nomination papers and wanted the rejection of those on this ground. Shri Maha Singh, one of the petitioners, the election agent of Shri Charan Singh, wanted time to reply to the objection, which was allowed. When the nomination papers of Shri Charan Singh were taken up for scrutiny at about 1.30 P.M. on

28th of November, 1984. Shri Maha Singh filed reply Exhibit P.8. It is to this effect:—

1. I, duly appointed election agent of Shri Charan Singh, son of Shri Mir Singh, 12 Lugak Road, New Delhi and a candidate of Lok Dal Party from this Sonapat constituency, submit that a duly certified copy of voters' list which finds mention age of candidate is attached along with the nomination paper which is part and parcel of the nomination and should be treated as a part of nomination paper. I further submit that the omission of the age written in the nomination paper is duly covered by the duly certified copy of voters' list. Therefore, the nomination should not be rejected on this ground. This has been clearly decided in Supreme Court Ruling 1984 A.I.R. 1517."

The Returning Officer, vide orders on the reverse of the nomination paper Exhibit P.1, rejected all the four nomination papers of Shri Charan Singh holding that the omission to fill in the age in the column meant for it in the nomination papers was a defect of substantial character. For reference, the order of the Returning Officer is reproduced as:—

- "Shri Charan Singh s/o Shri Mera Singh filed a set of four nomination papers on 27-11-1984, which were taken up for scrutiny at 12.30 P.M. today. An objection was raised in writing by Shri Mukhtiar Singh and Om Parkash s/o Ram Lal and orally by a few others present there that the candidate has omitted to specify his age in the nomination papers and hence the same should be rejected.
2. Shri Maha Singh, Election Agent for Shri Charan Singh, made an application today at 12.35 P.M. that the nomination papers of the candidate be kept pending till 2.30 P.M. to meet the objections. He was granted time upto 1.30 P.M. and meanwhile scrutiny of the remaining nomination papers was taken up.
3. After finishing the scrutiny of all the nomination papers, these four nomination papers were taken up again for consideration when Shri Phul Chand and Shri Shyam Lal Tayagi Advocates appeared on behalf of the candidate and argued that there was no lacuna in the nomination papers of the candidate and his age could be ascertained from the extract of the electoral roll enclosed with the nomination papers. They also argued that this deficiency in the nomination paper should have been checked at the time of filing the nomination paper and brought to the notice of the candidate by the Returning Officer. They cited AIR 1984 Supreme Court page 1513 and AIR 1984 Rajasthan page 183 in support of their arguments. Shri Mukhtiar Singh objector submitted that the rulings presented on behalf of the candidate were not applicable in this case and there was sufficient justification for rejecting the nomination papers as the candidate had failed to mention the age in all the nomination papers filed by him.
4. After hearing the parties and perusing all the four nomination papers filed by the candidate, I find that the omission to specify the age in the nomination papers by the candidate is a valid ground for rejecting of the nomination papers as laid down at pages 30-31 of the Hand-Book for Returning Officers issued by the Election Commission of India in 1984. The age of the candidate as indicated in the electoral roll, the extract of which was submitted with the nomination form is not relevant and this extract is relevant only to show that the candidate is an elector in some other constituency. The rulings produced on behalf of the candidate are not applicable to the circumstances of this case nor the Returning Officer was bound by law to scrutinise the nomination papers in minute detail at the time they were filed by the candidate.
5. Hence, all the four nomination papers of the candidate are rejected. A certified copy of this order be

given to the candidate or his election agent immediately free of costs."

3. Seventeen candidates remained in the field and contested the election from this constituency Shri Dharam Pal Singh respondent polled maximum number of votes, that is, 2,43,491 and was declared elected. The next candidate, who polled the highest number of votes was Shri Devi Lal, who got 2,40,550 votes.

4. Sarvshri Maha Singh and Ved Singh, electors of 4-sonapat constituency have challenged the election of Shri Dharam Pal Singh respondent on the ground that the nomination papers of Shri Charan Singh were improperly rejected. According to the petitioners, it was not the case of any one that Shri Charan Singh was below the minimum prescribed age to contest the election to the House of People and his competence to contest the election was not questioned. Even his identity was not in doubt. The omission to mention the age in the nomination papers was not a defect of substantial character. The Returning Officer should have satisfied himself about the age of Shri Charan Singh from the attested copy of the extract of the electoral roll from New Delhi constituency filed with the nomination paper, where he was entered as an elector. The dependence of the Returning Officer on the instructions contained in the Hand Book for Returning Officers issued by the Election Commission of India, to the effect that the omission to specify the age in the nomination paper is a ground for the rejection of the nomination paper was not correct. It is averred in the petition that the instructions run counter to sections 33 and 36 of the Representation of People Act, 1951 (hereinafter referred to as the Act). The election is sought to be set aside by the petitioners on this ground.

5. Shri Dharam Pal Singh respondent has contested this election petition. He raised preliminary objections in the written statement. As none of these was pressed at the time of arguments, so these need not be referred here. It is contended that the failure of a candidate to give a declaration of his age in the nomination paper is a defect of substantial character and for that reason the nomination papers of Shri Charan Singh were rightly rejected.

6. In replication the petitioners reiterated the contentions made in the petition.

7. On the basis of the pleadings, the following issues were framed:—

1. Whether the election petition does not comply with the provisions of section 81(3) of the Representation of the People Act, 1951, and for the reason has to be dismissed? O.P.R.
2. Whether the election petition does not contain a concise statement of material facts as required by the Representation of the People Act, 1951, and if so, what is its effect? O.P.R.
3. Whether the petition is liable to be dismissed on the ground that the copy of the petition served on the respondent was not signed by all the petitioners and their counsel? O.P.R.
4. Whether the nomination papers of Shri Charan Singh were improperly rejected? If so, whether the election of the respondent is liable to be declared void? OPP.
5. Relief.

8. In support of issue No. 4, Shri V. S. Chaudhry Returning Officer of the constituency, P.W. 1 and Shri Maha Singh, one of the petitioners, P.W. 2, were examined. The nomination papers, order of rejection and extract from the electoral roll of New Delhi constituency were tendered in evidence by the petitioners. The respondent did not lead any evidence either in support or rebuttal of the issues.

9. Issues No. 1, 2 and 3 were not pressed at the time of arguments on behalf of the respondent. These are decided against him.

10. Issue No. 4.—No nomination paper of a candidate can be rejected unless it fails to comply with Sections 33 and 34 of the Act or suffers from a defect of substantial

character. The decision of this issue, which is the only surviving issue in the case, depends on the questions, whether there is failure to comply with Section 33 of the defect which led to the rejection of the nomination papers of Shri Charan Singh is a defect of substantial character. The decision one way or the other will decide the fate of the petition, which is linked with the proper or improper rejection of the nomination papers in this case. Before embarking upon the decision on the contention of the rival parties about the substantial or unsubstantial character of the defect, it will be appropriate to quote the provisions of the Act and the Rules having a bearing on this vital question. The provisions relevant to the case are sections 33 and 36 of the Act and rule 4 of the Conduct of Election Rules, 1961 (hereinafter referred to as Rules). The provisions are reproduced as under :—

"Section 33: Presentation of nomination paper and requirements for a valid nomination.—(1) On or before the date appointed under clause (a) of section 30 each candidate shall, either in person or by his proposer, between the hours of eleven o'clock in the forenoon and three o'clock in the afternoon deliver to the returning officer at the place specified in this behalf in the notice issued under section 31 a nomination paper completed in the prescribed form and signed by the candidate and by an elector of the constituency as proposer :

Provided that no nomination paper shall be delivered to the returning officer on a day, which is a public holiday.

(1A) Notwithstanding anything contained in sub-section (1), for election to the Legislative P.9 Assembly of Sikkim (deemed to be the Legislative Assembly of that State duly constituted under the Constitution), the nomination paper to be delivered to the returning officer shall be in such form and manner as may be prescribed.

Provided that the said nomination paper shall be subscribed by the candidate as assenting to the nomination, and—

- (a) in the case of a seat reserved for Sikkimese of Bhutia-Lepcha origin, also by at least twenty electors of the constituency as proposers and twenty electors of the constituency as seconders.
- (b) in the case of a seat reserved for Sanghas, also by at least twenty electors of the constituency as proposers and at least twenty electors of the constituency as seconders;
- (c) in the case of a seat reserved for Sikkimese of Nepali origin, by an elector of the constituency as proposer.

Provided further that no nomination paper shall be delivered to the returning officer on a day which is a public holiday.

- (2) In a constituency where any seat is reserved, a candidate shall not be deemed to be qualified to be chosen to fill that seat unless his nomination paper contains a declaration by him specifying the particular caste or tribe of which he is a member and the area in relation to which that caste or tribe is a Scheduled Caste or, as the case may be, a Scheduled Tribe of the State.
- (3) Where the candidate is a person who, having held any office referred to in section 9 has been dismissed and a period of five years has not elapsed since the dismissal, such person shall not be deemed to be duly nominated as a candidate unless his nomination paper is accompanied by a certificate issued in the prescribed manner by the Election Commission to the effect that he has not been dismissed for corruption or disloyalty to the State.
- (4) On the presentation of a nomination paper, the returning officer shall satisfy himself that the names and electoral roll numbers of the candidate and his proposer as entered in the nomination paper are the same as those entered in the electoral rolls;

Provided that no misnomer or inaccurate description or clerical, technical or printing error in regard to the name of the candidate or his proposer or any other person, or in regard to any place mentioned in the electoral roll or the nomination paper and no clerical, technical or printing error in regard to the electoral roll numbers of any such person in the electoral roll or the nomination paper, shall affect the full operation of the electoral roll or the nomination paper with respect to such person or place in any case where the description in regard to the name of the person or place is such as to be commonly clerical, technical or printing error to be corrected and where necessary, direct that any such misnomer, inaccurate description, clerical, technical or printing error in the electoral roll in the nomination paper shall be overlooked.

- (5) Where the candidate is an electorate of a different constituency, a copy of the electoral roll of that constituency or of the relevant part thereof or a certified copy of the relevant entries in such roll shall, unless it has been filed along with the nomination paper, be produced before the returning officer at the time of scrutiny.
- (6) Nothing in this section shall prevent any candidate from being nominated by more than one nomination paper:

Provided that not more than four nomination papers shall be presented by or on behalf of any candidate or accepted by the returning officer for election in the same constituency.

Section 36 : Scrutiny of nominations.—

- (1) On the date fixed for the scrutiny of nominations under section 30, the candidates, their election agents, one proposer of each candidate and one other person duly authorized in writing by each candidate, but no other person, may attend at such time and place as the returning officer may appoint; and the returning officer shall give them all reasonable facilities for examining the nomination paper of all candidates which have been delivered within the time and in the manner laid down in section 33.
- (2) The returning officer shall then examine the nomination papers and shall decide all objections which may be made to any nomination and may, either on such objection or on his own motion, after such summary inquiry, if any, as he thinks necessary, reject any nomination on any of the following grounds:—
 - (a) that on the date fixed for the scrutiny of nomination the candidate either is not qualified or is disqualified for being chosen to fill the seat under any of the following provisions that may be applicable, namely:—
 - (b) that there has been a failure to comply with any of the provisions of section 33 or section 34; or
 - (c) that the signature of the candidate or the proposer on the nomination paper is not genuine.
- (3) Nothing contained in clause (b) or (c) of sub-section (2) shall be deemed to authorize the rejection of the nomination of any candidate on the ground of any irregularity in respect of a nomination paper, if the candidate has been duly nominated by means of another nomination paper in respect of which no irregularity has been committed.
- (4) The returning officer shall not reject any nomination paper on the ground of any defect, which is not of a substantial character.
- (5) The returning officer shall hold the scrutiny on the date appointed in this behalf under clause (b) of section 30 and shall not allow any adjournment of the proceedings except when such proceedings are interrupted or obstructed by riot or open violence or by causes beyond his control :

Provided that in case an objection is raised by the returning officer or is made by any other person, the candidate concerned may be allowed time to rebut it not later than the next day but one following the date fixed for scrutiny, and the returning officer shall record his decision on the date to which the proceedings have been adjourned.

- (6) The returning officer shall endorse on each nomination paper his decision accepting or rejecting the same and, if the nomination paper is rejected, shall record in writing a brief statement of his reasons for such rejection.
- (7) For the purposes of this section, a certified copy of an entry in the electoral roll for the time being in force of a constituency shall be conclusive evidence of the fact that the person referred to in that entry is an elector for that constituency, unless it is proved that he is subject to a disqualification mentioned in section 16 of the Representation of the People Act, 1950 (43 of 1950).
- (8) Immediately after all the nomination papers have been scrutinized and decisions accepting or rejecting the same have been recorded, the returning officer shall prepare a list of validly nominated candidates, that is to say, candidates whose nominations have been found valid, and affix it to his notice board.

Rule: Nomination Paper—Every nomination paper presented under sub-section (1) of section 33 shall be completed in such one of the Forms 2A to 2E as may be appropriate:

Provided that a failure to complete or defect in completing the declaration as to symbols in a nomination paper in Form 2A or Form 2B shall not be deemed to be a defect of a substantial character within the meaning of sub-section (4) of section 36.

For reference, the form prescribed of the nomination paper in form 2-A is also given as under:—

“FORM 2A

NOMINATION PAPER

Election to the House of the People.

I nominate as a candidate for election to the House of the People from the.....Parliamentary constituency.
Candidate's name..... His postal address.....
His name is entered at Sl. No.....in Part No.....
of the electoral roll for.....Assembly constituency
comprised within.....Parliamentary constituency.

My name is.....and it is entered at Sl. No.
in Part No.....of the electoral roll for.....
Assembly constituency comprised within.....Parliamentary constituency.

Date..... Signature of proposer.

I, the above-mentioned candidate, assent to this nomination and hereby declare—

- (a) that I have completed.....years of age;
- (b) that I am set up at this election by the.....party;
- (c) that the symbols I have chosen are in order of preference (i).....(ii).....and (iii).....

I further declare that I am a member of the..... caste/tribe which is a Scheduled caste/tribe of the State ofin relation to.....(area) in that State.

Date : (Signature of candidate).

(To be filled by the Returning Officer)

Serial No. of nomination paper.

This nomination was delivered to me at my office at..... (hours) on.....(date) by the candidate/proposer.

Date : Returning Officer”.

11. A look at all the nomination papers of Shri Charan Singh Exhibits P.1, P.2, P.3 and P.4 shows, and it is

the admitted case of the parties, that column (a) of the nomination paper to the effect that : “I have completed..... years of age” is blank and is not filled. It is to be seen whether the filling of the blanks left through dotted lines is an idle formality or the law commands the candidate to fill this. The nomination paper, which is to be filled by the candidate and not the proposer has three clauses :— ‘(a), (b) and (c)’. ‘(a)’ concerns the declaration by the candidate that he has completed so many years of age; ‘(b)’ is regarding the party which has set up the candidate and ‘(c)’ is in respect of the election symbol. A further declaration has to be made by candidates belonging to scheduled castes or tribes, offering themselves as candidates, that they belong to this category, in accordance with section 33(2). Nomination paper has to be submitted in accordance with the provisions of section 33 of the Act. The nomination paper has to be ‘completed’ in the prescribed form and signed by an elector of the constituency as proposer and by the candidate, before it can be submitted to the Returning Officer. The term, ‘completed’ as it is used in section 33(1)(a) came up for consideration before the Supreme Court in Dharam Singh Rathi vs. Hari Singh M.L.A. and others, AIR 1975 S.C. 1274. In that case Jagan Nath, one of the candidates gave only cryptic address in place of his full one. He only wrote ‘Jagan Nath --Smaikha Mandi’. The Returning Officer thought it to be a technical error. He rejected the nomination papers since no one was present before him to rectify it. It was held :—

“A nomination paper has to be delivered to the Returning Officer by the candidate or his proposer in accordance with section 33(1) of the Act. The nomination paper must be completed in the prescribed form. The requirement of sub-section (4) is that the Returning Officer shall satisfy himself on the presentation of a nomination paper that the names and electoral roll numbers of the candidate and his proposer as entered in the nomination paper are the same those entered in the electoral rolls. In certain types of defects detected at the time of the presentation of the nomination paper the proviso to sub-section (4) empowers the Returning Officer to overlook such mistakes or to get them rectified as the case may be. Generally speaking the kinds of defects mentioned in the proviso would not be of a substantial character so as to justify the rejection of a nomination paper. There may, however, even amongst these types of defects, be some such that necessitate their rectification and if not rectified that may make the nomination paper liable to be rejected. But the defect of non-supply of postal address is not covered by the proviso to sub-section (4) of section 33 of the Act. It is a defect of a substantial one then the nomination paper has got to be rejected. Sub-section (4) of section 36 enjoin the Returning Officer not to reject any nomination paper on the ground of any defect which is not of a substantial character. But if it is of a substantial character then sub-section (2) provides that the Returning Officer shall reject the nomination paper when there has been a failure to comply with any of the provisions of section 33 or section 34. Reading rule 4 of the Rules and Form 2 B it would be noticed that non-supply of postal address of the candidate or supplying such cryptic address which virtually amounts to non-supply of address is a failure to comply with the provisions of section 33(1). Hence we agree with the findings of the High Court that Jagan Nath's nomination papers were not improperly rejected by the Returning Officer.”

The nomination paper can be taken as ‘completed’ if the information wanted in form is fully given. The cryptic postal address which was not the full address of Jagan Nath, was held in Dharam Singh Rathi's case as non-compliance of section 33.

In *Brijendralal Gupta and another v. Jwalaprasad and others*, A.I.R. 1960 S.C. 1049, in which age was omitted, it was held :—

"It is common ground that the first part of the nomination paper which has to be filed in by the proposer was in order and the second part was duly signed by the candidate but failed to declare his age as prescribed by (a) above. When the Returning Officer noticed this omission he made an order rejecting respondent 5's nomination. The brief statement of reasons which the Returning Officer has recorded shows that he held that the failure of respondent 5 to declare his age cannot be treated as clerical or technical error but is of a substantial nature since declaration as to age was necessary in order to entitle a candidate to be qualified under Article 173 of the Constitution. The Returning Officer has also noted that he took the objection suo motu and rejected the nomination paper of respondent 5. Thus, there is no doubt that respondent 5 omitted to specify his age before the signed his nomination paper and in that sense his nomination paper has not been completed in the prescribed form. (emphasis has been supplied by me).

In these two judgments because of the omissions the nomination papers were held to be not completed before submission to the Returning Officer. The nomination paper is not 'completed' under section 33 once column (a) in Form 2-B about the declaration of age is not filled. It is immaterial for the purposes of section 33 whether the objection of eligibility to contest the election, because of age, is taken or not. On the ground of failure to mention the age in the nomination paper, ground for rejection under section 36(2)(b) is attracted.

12. The form of the nomination paper for the house of the people is prescribed in Form 2-A under rule 4 of the Rules, which includes a declaration in column (a), which has to be filled. Unless the form is completed or part of the nomination paper lacks in declaration, it shall not fall within the term 'completed' as used in section 33(1) of the Act. An exception is provided in proviso to rule 4 in regard to the declaration of symbol that any failure to complete or defect in completing the declaration as to symbol shall not be deemed to be a defect of a substantial character within the meaning of section 36(4). Rule 4 is to be read in conjunction with section 33 as the form of nomination paper is prescribed in this rule. The proviso to rule 4 by necessary implication provides that if there is failure to complete or defect in completing the other two declarations, that is, (a) and (c) in the nomination paper it shall be deemed to be a defect of substantial character and should lead to rejection of a nomination paper under section 36(4). Even a deficiency in the declaration can lead to that result. This is also the view taken by the Supreme Court in *Brijendralal's case* (supra).

13. Right from 28th of November, 1984, before the Returning Officer, Maha Singh petitioner had taken the position that this defect is not of a type, which can fall in the category of a defect of substantial character for a drastic action to reject the nomination paper. On behalf of the petitioners, mainly reliance is placed on *Ganu Ram v. Rikhi Ram Kaundal and others*, A.I.R. 1984 S.C. 1513. In that case the two grounds urged by the election-petitioners based on facts were :—

"The first ground urged was that the nomination paper filed by the appellant was not in order inasmuch as it did not contain any declaration by the appellant specifying the particular caste of which he is a member and the area in relation to which the said caste has been declared to be a Scheduled Caste in the State. On this basis it was contended that the nomination paper of the appellant had been improperly accepted by the Returning Officer. The second ground of objection raised was that since the appellant had not made any declaration in the nomination paper regarding the particular Scheduled caste to which he belonged, he should be deemed

to be disqualified for being chosen to fill the seat in question—23—Gehrwain reserved constituency—in view of the mandatory provisions contained in sub-section (2) of S. 33 of the Act."

The Supreme Court in *Ganu Ram's case* (supra) held :—
".....It is not disputed that in the nomination form filed by the appellant and his proposer, no written declaration had been made specifying the caste to which the appellant belongs and the area in relation to which that caste is a Scheduled Caste of the State. But it is common ground that along with the nomination paper the appellant had filed as an annexure thereto a certificate issued by the Sub-Divisional Magistrate, Ghumarwin certifying that the appellant belonged to a Scheduled Caste namely 'Lohar'. The said certificate was appended to the nomination paper obviously with the sole purpose and intention of making it known to the Returning Officer and all others concerned that the appellant is filing his nomination as a candidate belonging to a Scheduled Caste namely 'Lohar' and it was in proof of that assertion and for eliminating doubt or controversy in the matter that the Sub-Divisional Magistrate's certificate was produced. The High Court has taken the view that since S. 33 of the Act requires that the nomination paper must be in the prescribed form and Form 2B is a self-contained one, the filing of any enclosure or certificate along with the form is not contemplated. We are unable to agree with this view. When the nomination paper has been made in the prescribed form there is no legal prohibition against the other requisite particulars being furnished in a separate paper appended to the form instead of writing them out in the form itself. This is very often done in the matter of filing returns of income-tax, wealth-tax etc. in such cases the annexure appended to the form should be treated as part of the nomination paper. We are, therefore, of opinion that the certificate which was produced by the appellant as an annexure to the nomination paper has to be treated as forming part of the nomination paper and the declaration contained therein that the appellant belongs to the Scheduled Caste of 'Lohar' must be understood and treated as a declaration by the appellant in the nomination form within the meaning of sub-section (2) of Section 33. We have to remember that we are dealing with nomination papers pertaining to candidates belonging to Scheduled Castes and Scheduled Tribes, who, for well known historical reasons, are unfortunately, extremely backward socially, economically and educationally in comparison with other sections of our people. In such a context we consider that the Court has to place a liberal and benevolent interpretation on the provisions contained in section 33(2) of the Act rather than adopt a narrow, rigid, technical and purely literal construction. In *S. Sivaswami v. V. Malaikanan* (1984) 1 SCC 296; (AIR 1983 S.C. 1293) which was also a case arising under the Act, one of us speaking on behalf of a three Judge Bench of this Court had occasion to make the following observations which are apposite to the present context also:

"In this context it is necessary to remember that nearly 90 per cent of the electorate in this country consists of illiterate and uneducated rural folk total unacquainted with the intricacies of the rules and technicalities of procedure pertaining to elections. Even if the best of endeavour is made to explain to them such complicated rules and procedures they may not be capable of grasping and fully understanding all the implications and actually carrying them into effect while exercising their franchise. If the right conferred on the people to choose their representatives to the State Legislatures and the Parliament through the process of free and fair elections is to be meaningful the will of the illiterate and unsophisticated voter expressed through a marking on the ballot paper which though not strictly inside the column of the particular candidate is clearly indicative of the identity of the candidate for whom

the vote is cast has to be respected and given its full effect."

6. It is manifest that the legislative purpose underlying sub-section (2) of section 33 of the Act is that when a nomination paper is filed in respect of a reserved seat in any constituency there must be a clear specification by the candidate of the particular caste or tribe to which he belongs and the area in relation to which that caste or tribe is a Scheduled Caste or Scheduled Tribe of the State. This requirement is fully satisfied in the present case because by producing the certificate of the Sub-Divisional Magistrate as an annexure to his nomination paper, the appellant had clearly made it known that he was filing the nomination as a candidate belonging to the 'Lohar' caste, which is admittedly a Scheduled Caste in the entirety of the area of the State of Himachal Pradesh. It is also significant that no objection whatever was raised against the nomination filed by the appellant at the time of scrutiny. The Returning Officer had published a notice of nominations under section 35 of the Act and in the said notice it was expressly stated that the appellant had filed his nomination as a candidate belonging to the Scheduled Caste, namely, 'Lohar'. Having regard to all the facts and circumstances of the case and the legal position as explained above, we consider that the High Court was in error in holding that the nomination paper filed by the appellant was not valid and its acceptance by the Returning Officer was improper".

on this basis it is argued on behalf of the petitioners that the defect in the nomination papers of Shri Charan Singh is not of substantial character and the Returning Officer was not justified in rejecting these papers, when Ganu Ram's case, was brought to his notice. Shri B.S. Malik, learned counsel for the petitioners urged that the Returning Officer was required to have referred to Exhibit P.9, and extract from the electoral roll of the New Delhi constituency, which, in order to fulfil the requirement of section 33(5) was produced, in which the approximate age of Shri Charan Singh is mentioned as 81 years. This according to Shri Malik, should have been treated as a part of the nomination papers as was done in Ganu Ram's case (supra). He has further urged that neither anybody disputed the qualification of Shri Charan Singh to contest the election nor his identity, and in the absence of any such challenge, the Returning Officer, in whose estimate Shri Charan Singh was more than 60 years of age, should have utilised his assessment of the age of Shri Charan Singh to fill up the lacuna, if there seemed to be any in the nomination paper, because of the commission in leaving column (a) of the nomination paper unfilled.

14. The nomination paper prescribes for a declaration of age in column (a). What the petitioner, as an election agent of Shri Charan Singh, wanted the Returning Officer to consider on the basis of Ganu Ram's case (supra) and his counsel before this Court, was to utilise the extract from the New Delhi constituency, which is a requirement of section 33(5) of the Act. It is only for a limited purpose to show that the candidate, who is not an elector in the constituency from which he seeks to contest the election, is an elector somewhere else. To satisfy that he is to produce the extract from the electoral roll of that constituency where he is registered as an elector to show his competency to contest the election. The extract of the electoral roll is produced under section 36(7) for a specific purpose and not to support the declaration of age. Exhibit P. 9 was only relevant to show that Shri Charan Singh was an elector somewhere.

The filling of column (a) of the nomination paper is not completely an idle formality. Proviso to rule 4 dilutes the mandatory nature of column (c) about the declaration of symbol. Ganu Ram's case dilutes the effect of the further declaration about the scheduled caste/tribe in case the certificate from the concerned authority is furnished before the scrutiny of the nomination paper by the Returning Officer. If the argument addressed on behalf of the petitioners is accepted, then the omission to fill any column of the nomi-

nation paper cannot visit the candidate with penalty of rejection of the nomination paper, neither for the infraction of section 33 in not submitting a completed nomination paper nor for a defect of a substantial character. A candidate from Sonapat constituency could submit the nomination paper with columns (a), (b) and (c) to be filled by the candidate, as blank, and say that the electoral roll was with the Returning Officer and he was also before him. The Returning Officer could verify his age from the electoral roll or assess from his appearance. In this manner he could resist the rejection of his incomplete nomination papers. Such a thing is not permitted, as this is likely to erode the mandate of section 33, which commands that a 'completed' nomination paper shall be filed, and also section 36(2)(b), which makes a nomination paper liable for rejection in case the provisions of sections 33 and 34 are not complied with. This is also the ratio of Brijendralal's case and Dharam Singh's case (supra).

According to section 36(2)(b), the nomination paper has to be rejected if the provisions of sections 33 and 34 have not been complied with. As discussed earlier, section 33 has been infringed, as the 'completed' nomination paper in the true sense of the term was not submitted before the Returning Officer. Shri Charan Singh had filed Exhibit P. 9 as a requirement of section 36(7) to show that he is registered as an elector in a different constituency. It was only for that purpose and for no other.

15. The case in hand also involves similar situation and same question of law as in Brijendralal's case (supra). The facts of Brijendralal's case were that the election for Manendragarh constituency of Madhya Pradesh was held on 25th of February, 1957. Udebhan Tiwari filed nomination papers to contest the election. He omitted to make a declaration regarding his age in the nomination paper. The defect was discovered at the time of scrutiny and his nomination paper was rejected. The order of the Returning Officer is quoted in Jawala Prasad v. Brijendra Gupta and others, 21-Election Law Reports page 485, wherein the judgment of the High Court is reported. The order was to the effect:—

"The candidate has not declared his age in the declaration. This cannot be treated as clerical or technical error, but is of a substantial nature as declaration with regard to age was necessary in order to entitle a candidate to be qualified under Article 173 of the constitution. Objection taken suo motu and nomination paper rejected."

After the election, the election of the returned candidate was challenged and one of the grounds was that the nomination paper of Udebhan Tiwari, who was respondent No. 5 in that case, was improperly rejected. One of the issues in the case was whether the nomination paper of respondent No. 5 was improperly rejected because of the omission to fill in the age in the prescribed column. The Tribunal held that Udebhan Tiwari, respondent No. 5 did not make any attempt to rectify the defect in the nomination paper, that the Returning Officer could not have allowed to rectify the defect at the stage of scrutiny of the nomination paper and that the defect in the nomination paper was of a substantial character. The Tribunal upheld the rejection of the nomination paper and dismissed the election petition. The High Court on appeal held that the rejection of the nomination paper was improper and set aside the election. Brijendralal then went to the Supreme Court against the judgment of the High Court.

16. In Brijendralal's case (supra), the point of law, which came to be decided by the Supreme Court is noticed in the very first sentence of the judgement: that is "Does the failure of a candidate to specify his age as required by the prescribed form of the nomination paper amount to a defect of a substantial character under section 36(4) of the Representation of the People Act, 43 of 1951, (hereinafter called the Act)? That is the point of law which arises for our decision in the present appeal." In para No. 10 it was again referred as:

"That takes us to the question as to whether the failure to specify the age in the nomination paper amounts to a defect of a substantial character under section 36(4) or not."

For reference, the observations of the Supreme Court in Brijendralal's case (supra) are reproduced in detail as:—

"(9)—The next question which we must consider is whether in the case of such an omission it was obligatory on the Returning Officer to hold an enquiry under section 36(2) of the Act. The High Court has held that the Returning Officer ought to have held an enquiry under section 36(2)(a) and satisfied himself whether or not respondent 5 was eligible to stand for the election. In our opinion the High Court was in error in coming to this conclusion. If the nomination paper of respondent 5 did not comply with the provisions of section 33, the case fell squarely under section 36(2)(b) and the only question which can arise in such a case is whether or not the defect arising from the failure to comply with the provisions of section 33 is of a substantial character or not. If the defect is not of a substantial character, the Returning Officer shall not reject the nomination paper on the ground of the said defect; if, on the other hand, the defect is of a substantial character the returning officer has to reject the nomination paper on the ground of the said defect. That is the effect of the provisions of section 36(2)(b) and (4) read together. An enquiry which is necessary under section 36(2)(a) may and can be held for instance in cases where the nomination paper shows the age of the candidate as above 25, but an objection has been raised that in fact he is below 25 and as such incompetent to stand for election under Article 173 of the Constitution; in other words, the impugned nomination has complied with the provisions of section 33 and as such does not fall under section 36(2)(b) at all, nevertheless the validity of the nomination can be challenged on the ground that in fact Article 173 is not complied with. Cases falling under this class must be distinguished from cases falling under section 36(2)(b). In the latter class of cases the failure to comply with the provisions of section 33 being established, there is no scope for any enquiry under section 36(2)(a). Once the alleged non-compliance is proved, the defective nomination falls to be accepted or rejected according as the defect is of an unsubstantial or of a substantial character. Therefore, it is not right to hold that even after the Returning Officer was satisfied that the omission to specify his age showed that the nomination paper of respondent 5 had not complied with the provisions of section 33, he should still have held an enquiry under section 36(2)(a). Non-compliance with the provisions of section 33 itself would justify the rejection of the nomination paper provided of course that the defect arising from the non-compliance in question is of a substantial character

(10) That takes us to the question as to whether the failure to specify the age in the nomination paper amounts to a defect of a substantial character under section 36(4) or not. There is little doubt that the age of the candidate is as important as his identity, and in requiring the candidate to specify his age the prescribed form has given a place of importance to the declaration about the candidate's age. Just as the nomination paper must show the full name of the candidate and his electoral roll number, and just as the nomination paper must be duly signed by the candidate so must it contain the declaration by the candidate about his age. It is significant that the statement about the age of the candidate is required to be made by the candidate above his signature and is substantially treated as his declaration in that behalf. That being the requirement of the prescribed nomination form it is difficult to hold that the failure to specify the age does not amount to a defect of a substantial character. The prima facie eligibility of the person to stand as a candidate which depends under Article 173 of the Constitution, inter alia on his having completed the age of 25 years is an important matter, and it is in respect of such an important matter that

the prescribed form requires the candidate to make the declaration. It would, we think, be unreasonable to hold that the failure to make a declaration on such an important matter is a defect of an unsubstantial character. In this connection it is relevant to refer to the fact that the declaration as to the symbols which the prescribed form of the nomination paper requires the candidate to make is by the proviso to rule 5 given a subsidiary place. The proviso to rule 5 shows that any non-compliance with the provisions of sub-rule (2) of rule 5 shall not be deemed to be a defect of a substantial character within the meaning of section 36, sub-section (4). In other words, this proviso seems to suggest that according to the rule-making authority, failure to comply with the requirements as to the declaration of symbols as specified in rule 5, sub-rule (2) would have been treated as a defect of a substantial character; that is why the proviso expressly provides to the contrary. This would incidentally show that the failure to specify the age cannot be treated as a defect of an unsubstantial character.

- (11) On behalf of the respondents it has, however, been urged before us that the Returning Officer should not be astute to reject the nomination papers on technical grounds and that in the present case the Returning Officer should have looked at the electoral roll and satisfied "himself that respondent 5 was duly qualified to stand for the election. His age is 48 and it was shown in the electoral roll against his name. It was thus a simple matter of looking at the electoral roll to be satisfied that the omission to specify the age in the nomination form was no more than a technical breach of the requirements of section 33. We are not impressed by this argument. As we have already observed in case of non-compliance with section 33 which attract the provisions of section 36 (2) (b), there would be no occasion to hold an enquiry under section 36(2) (a). The only point to consider in such cases would be whether the defects in question are substantial or not; and so the argument that the Returning Officer could have easily verified the age of respondent 5 is not really material in construing section 36 (4).
- (12) In this connection it is relevant to consider the effect of the presumption which is raised under section 36 (7) of the Act and its effect. As we have already noticed, under section 36 (7) a certified copy of the entry in the electoral roll shall be conclusive evidence of the fact that the person referred to in that entry is an elector for that constituency; but it must be remembered that this presumption is raised for the purposes of this section and it is made expressly subject to the last clause of this sub-section, that is to say, the presumption can arise unless it is proved that the person in question is subject to any of the disqualifications mentioned in section 16 of the Act of 1950. The use of the adjective "conclusive" which qualifies "evidence" is technically inappropriate because the presumption arising from the production of the certified copy is by no means conclusive."

In Brijendralal's case (supra), the Supreme Court noticed a case reported as Charanjit Lal Ram Sarup v. Lehri Singh Ram Narain, AIR 1958 Punjab 433 and disapproved the ratio of that judgement by observing:—

"There is one more decision on which the respondents have relied. In Charanjit Lal Ram Sarup v. Lehri Singh Ram Narain, AIR 1958 Punjab 433, the Punjab High Court was dealing with a case where the nomination paper of a candidate had been rejected not only on account of the omission to state the age in the nomination paper but also for the reason that no evidence was led by the candidate concerned or by his representative or agents to show that the candidate had completed his 25 years though the Returning Officer had directed that such evidence should be led. It appears that the Election Tribunal also found that on the evidence adduced before it, it could not be determined with any amount of certainty as to whether at the time of

filing the nomination paper Mr. Pirithi the candidate in question was above or below 25 years of age. That is why it was held that the rejection of the nomination paper could not be said to be improper. One of the points urged before the Punjab High Court was that the omission to state the age was not a defect of a substantial character but the High Court did not feel called upon to give a firm finding on this point, because in the case before it there was not only the impugned omission but there was also no material before the Returning Officer "whereby that omission could be made good. We ought, however, to add that though on the facts proved in that case the election petition should have been dealt with under section 36 (2) (b) and (4) it was apparently considered as falling under section 36 (2) (a) and that, as we have already pointed out, is not the true legal position. Besides there are certain general observations made in the judgment which would indicate that the High Court was inclined to hold that the defect arising from the failure to declare the age in the nomination form was not of a substantial character. It is unnecessary to add that these observations do not correctly represent the effect of section 36(2)(b) and section 36(4) of the Act."

17. The arguments of Shri B. S. Malik regarding the enquiry and reference to extract of the electoral roll by the Returning Officer at the time of scrutiny find an answer in the above observations of the Supreme Court in Brijendralal's case (supra). In this case, value and purpose of the extract of the electoral roll produced under section 36(7) is explained. In my view, Brijendralal's case (supra) has dealt with and determined the question of law that the omission of the declaration of age from the nomination paper is a defect of a substantial character. When the declaration is not made, there is no question of looking for evidence to support it. Any effort to have a support for an absent declaration is futile. It was urged by Shri Malik that in Brijendralal's case (supra), the nomination paper of Udebhan Tiwari, respondent No. 5, was rejected, as is apparent from the order of the Returning Officer, in that case, on the ground of lack of qualification to contest the election, which is not the position in the case in hand. Brijendralal's case (supra) has decided a question of law and that cannot be twisted to give a different interpretation to the law laid down by the Supreme Court. The statutory form of nomination paper insists upon the candidate for a declaration of age and its omission leads to an infraction of section 33 and amounts to a defect of a substantial character. The mere fact that no question for competency of Shri Charan Singh to contest the election or to his identity was raised, does not dilute the defect of the omission of the declaration about his age in the nomination paper.

The learned counsel for the petitioners referred to Harcharan Singh v. Mohinder Singh and others, AIR 1968 S.C. 1500 to urge that the omission of age from the copy of the electoral roll was ignored in that case. He tried to urge that the facts of that case were similar to the case in hand. The facts of that case were that Harcharan Singh was registered as an elector in Gidderbaha constituency. He contested from Zira constituency. Since he was contesting from a constituency where he was not registered as a voter he applied for the supply of the attested copy of the electoral roll to the Sub-Divisional Officer, Muktsar, who in turn directed the Tahsildar of that place, in charge of the election records, to issue a copy. The attested copy of the electoral roll did not contain age and house number of Shri Harcharan Singh. The Returning Officer observed: "I have examined the nomination paper in accordance with section 36 of the Representation of the People Act, 1951, and decide as follows:—

'Particulars correct. The candidate's age is not shown in the certificate. But the candidate is an old man and is certainly above the age 25 years and as such he is fully qualified. No objection is raised. Fee deposited, Oath taken. Valid. Accepted.'

No one had raised any objection before the Returning Officer. The Supreme Court held:—

"The primary purpose of the diverse provisions of the election law which may appear to be technical is to safeguard the purity of the election process, and the Courts will not ordinarily minimise their operation. If there was any reason to think that the appellant was negligent, or that on account of defects which were found in the copy produced by the appellant the purity of the election process was likely to be affected, we would have been oath to disagree with the High Court. But in this case the appellant moved the Electoral Registration Officer, for a copy certifying the correctness of the entries in the list which had been supplied to him, and the Electoral Registration Officer supplied to him a copy which though defective, did include sufficient particulars for identifying the appellant. No objection was raised before the Returning Officer and that officer after holding an inquiry was apparently of the view that there was no defect which could be regarded as of a substantial character. We do not think that any ground is made out for disagreeing with the view of the Returning Officer."

Harcharan Singh's case (Supra) does not render any help to the petitioners on principle, because Harcharan Singh had made bonafide efforts to produce the records, which statute required him to produce before the Returning Officer. The mistakes in the attested copy of the electoral roll supplied to him by the Tahsildar were beyond his control.

18. The omission of the declaration about the age occurred repeatedly in all the four nomination papers of Shri Charan Singh. If it had been one nomination paper, it could be said to be either due to the clerical error, inadvertent or oversight, but the same could not be the result of these in all the four nomination papers. No effort was made to explain as to how it happened. Shri Charan Singh has been in political life since a long time and he held the top offices in the State Government and the Central Government. The repeated omission from the nomination papers of the same thing gives an impression that he too much abdicated in favour of the person or persons, who filled the nomination papers on his behalf. It seems that he did not advert to care to check each entry of the nomination paper himself before signing and tendering it before the Returning Officer. Such a casual attitude does not reflect care and seriousness on his part. Such lack of serious interest on the part of Shri Charan Singh works against the interest of the election petition. It was argued by Shri H. L. Sibal, learned Senior Advocate appearing on behalf of the respondent that this could be a deliberate attempt on the part of Shri Charan Singh to leave a defect in the nomination papers, so that, in case of necessity, this could be made a ground for challenging the election of the returned candidate. I do not think if there is sufficient material on the file for each such a conclusion nor can it be expected from a person, who once held one of the highest positions in the country.

19. The argument of the petitioners is that the Returning Officer had seen Shri Charan Singh and in his assessment his (Charan Singh's) age was more than 60 years. The Returning Officer should not have been influenced by the omission of age from the nomination papers in that situation to reject them. This could not be done in view of Brijendralal's case (supra), where it was held that such an enquiry by the Returning Officer was not permissible even under section 36(2)(a).

20. The omission of the declaration of age from the nomination paper is a defect of a substantial character according to the law laid down by the Supreme Court in Brijendralal's case (supra). Shri Malik is not correct when he urged that Brijendralal's case (supra) is a judgment on facts of that case and does not decide a question of law to be applied as such. The question as formulated by the Supreme Court in Brijendralal's case (supra) has been noticed in earlier paragraph of the judgment. Ganu Ram's case (supra) deals with the omission of a similar declaration from the nomination paper in regard to the Scheduled Caste/Tribe. The Supreme

Court, in Ganu Ram's Case (Supra), in the light of the special circumstances of the Backward and Scheduled Caste, Tribes took that view. The omission of age was not involved in Ganu Ram's case (Supra) as was in Brijendralal's case (supra) I however, was said with emphasis by Shri B. S. Malik that Ganu Ram's case (Supra) also involved an omission of a declaration in the nomination paper. Even if there is a conflict of the Supreme Court decisions in Brijendralal's case (supra) and Ganu Ram's case (supra), on the question of section 36(4) of the Act in relation to omission of a declaration from the nomination paper, then Brijendralal's case (supra), is to have precedence, being a decision by a larger number of Judges. A Division Bench of this Court in *Des Raj Juneja and others v. Union of India and others* I.L.R. (1979) 1-Punjab and Haryana 388 following the Supreme Court cases reported as *Mattulal v. Radhe Lal*, A.I.R. 1974 S.C. 1596 and *State of U.P. v. Ram Chandra Trivedi*, A.I.R. 1976 S.C. 2547 held:—

"There appears to be apparent divergence of opinion regarding the scope and ambit of this doctrine of promissory estoppel between the two latest judgments of the Supreme Court. Faced with this delicate situation, this Court is called upon to chalk out a course for itself. The same depends on the answer to the question: The decision of which judgment is binding on the High Court as declaration of law as envisaged under Article 141 of the Constitution?"

(15) In *Mattulal v. Radhe Lal* when contradiction between two judgments of the Supreme Court was discovered, it was held—

"But whatever be the reason, it cannot be gainsaid that it is not possible to reconcile the observations in these two decisions. That being so, we must prefer to follow the decision in *Sarvate T.B.'s* case as against the decision in *Smt. Kamla Soni's* case, as the former is a decision of a larger Bench than the latter."

"(16) In the *State of U.P. v. Ram Chandra Trivedi* in somewhat similar situation, their Lordships held:—

It is also to be borne in mind that even in case where a High Court finds any conflict between the views expressed by a larger and smaller benches of this Court, it cannot disregard or skirt the views expressed by the larger benches. The proper course for a High Court in such a case as observed by this Court in *Union of India v. K. S. Subramaniam* to which one of us was a party, is to try to find out and follow the opinion expressed by larger benches of this Court in preference to those expressed by smaller benches of the Court which practice, hardened as it has into a rule of law, is followed by this court itself."

In view of this Brijendralal's case (supra), which was decided by three Judges will have a preference over Ganu Ram's case (supra), which was decided by two Judges of the Supreme Court.

21. It was urged on behalf of the petitioners that in view of the ratio of Ganu Ram's case (supra) the meanings to the word, 'completed' cannot be given, which are sought to be given during the arguments and accepted by me in the earlier part of the judgment. I draw support from Brijendralal's case and Dharam Singh's case (supra). Brijendralal's case (supra) has decided a question of law, which was formulated in the beginning of the judgment and has been noted in paragraph 16 of this judgment. When a point of law is decided by a superior Court, the reasoning, which goes in line with that decision, can be adopted. No reasoning, which tends to run counter to that decision or has the tendency to destroy it can be adopted. To support this, Shri H. L. Sibal, Senior Advocate relied upon *Harper and others v. National Coal Board* (1974) 2 All England Law Reports, page 441 to the effect:—

"How then do we stand on the law? We have listened to a most helpful discussion by counsel for the

proposed plaintiffs on the doctrine of precedent. One thing is clear. We can only accept a line of reasoning which supports the actual decision of the House of Lords. By no possibility can we accept any reasoning which would show the decision itself to be wrong. The second proposition is that, if we can discover the reasoning on which the majority based their decision, that we should accept that as binding on us. The third proposition is that, if we can discover the reasoning on which the majority base their decision, we should reject it. It must be wrong because it led them to the wrong result. The fourth proposition is that if we cannot discover the reasoning on which the majority based their decision we are not bound by it. We are free to adopt any reasoning which appears to "us to be correct, so long as it supports the actual decision of the House."

The reasoning about the term 'completed', as it occurs in section 33 in line with the decision in Brijendralal's case (supra) and support is drawn from Dharam Singh's case (Supra).

"22. It was then argued on behalf of the petitioners that the Returning Officer had rejected the nomination papers of Shri Charan Singh on the ground of instruction (xiii) as contained at pages 30-31 of the Instructions issued by the Election Commission of India in 1984 (Hand Book for Returning Officers). Shri Malik urged that instruction (xiii) has no legal basis and it is only an executive instruction. According to him, it tends to curtail the powers of the Returning Officer to hold an enquiry under section 34(2) and also tramples his jurisdiction as a quasi-judicial authority to decide the objections by giving reasons. The instructions as they are worded, according to the learned counsel for the petitioners, snatch his discretion to take a decision by providing that the moment he finds column (a) in the nomination paper blank, then he is to reject it.

Instruction (xiii) under the heading: "Grounds for rejection of nomination paper" is:

"(xiii) the candidate has omitted to specify his age in the nomination paper, or"

I have seen such instructions which were issued from time to time upto 1972 by the Election Commission of India. In those instructions the language of instruction No. (xiii) is not to be found under the head "Grounds for rejection of the nomination papers." Prior to that the instructions were "the nomination paper is not substantially in the prescribed form, or...."

It is correct that these are administrative instructions issued for the guidance of the Returning Officers. The executive instructions are not binding and do not have the force of law. If these instructions can trace their origin in the provisions of the Act, the Rules or in any judgment of the Supreme Court, which is the law of the land, then these cannot be ignored by the officers with that case as is urged by Mr. Malik. The Act or the Rules directly do not contain any such language as is contained in instruction No. (xiii), but it can be said to draw support from Brijendralal's case (supra), as this instruction No. (xiii) was issued after 1972. Since Brijendralal's case (supra) has interpreted the provisions of section 33 and 36 of the Act and rule 4 and has laid down a principle of law that the omission of declaration of age in the nomination papers is a defect of a substantial character, the instructions cannot be taken to impinge the provisions of the Act and the Rules or the powers of the Returning Officers.

23. In the light of the principle of law settled in Brijendralal's case (supra) nomination papers Exhibits P. 1, P. 2, P. 3 and P. 4 filed by Shri Charan Singh to contest No. 4—Sonapat Parliamentary Constituency for a seat in the House of the People in the elections held in 1984 bore a defect of a substantial character as there was omission of the declaration of age and thus were properly rejected. The nomination papers also infringed section 33 and were pro-

perly rejected under section 36(2)(b). In view of this, the issue is decided against the petitioners and in favour of the respondent.

By respondent.

Rs. P.

24. In view of decision of issue No. 4, the petition is dismissed with costs of Rs. 2,000/-.

Costs as assessed by the Court.

2000.00

KULWANT SINGH TIWANA, Judge

Total 2000.00

May 31, 1985.

(Rs. Two Thousand only).

Memo of costs incurred by the Respondent in this Court as assessed by the Court and payable by the petitioners.

Sd/- Additional Registrar

नई दिल्ली, 7 अगस्त, 1985

अर्पण

आ. अ. 53.—निर्वाचन आयोग का समाधान हो गया है कि निम्न कारणों के स्तम्भ 4 में विनिर्दिष्ट निर्वाचन लड़ने वाले प्रत्येक अभ्यर्थी जिसने सारण के स्तम्भ 2 में विहित लोक सभा के लिए उसके नाम के सामने स्तम्भ 3 में विनिर्दिष्ट निर्वाचन-क्षेत्र से हुए साधारण निर्वाचन में जैसा कि उक्त सारण के स्तम्भ 5 में दर्शाया गया है, जैसा कि लोक प्रतिनिधित्व अधिनियम, 1951 तथा तद्वत बनाए गए नियमों द्वारा अधिष्ठित है, अपने निर्वाचन व्ययों का कोई भी लेखा दाखिल करने में असफल रहा है:

और, उक्त अभ्यर्थियों ने सम्बन्ध भूचना दिए जाने पर भी उक्त असफलता के लिए या तो कोई कारण अवकाश स्पष्ट करण नहीं दिया है और निर्वाचन आयोग का यह समाधान हो गया है कि उनके पास उक्त असफलता के लिए कोई उपर्युक्त कारण या न्यायोचित्य नहीं है।

अतः अब उक्त अधिनियम क. धारा 10क के अनुसरण में निर्वाचन आयोग घोषणा करता है कि निम्न सारण के स्तम्भ 4 में विनिर्दिष्ट व्यक्तियों को संसद के किस भी सदन के या किस राज्य के विधान सभा या विधान परिषद् के सदस्य चुने जाने या होने के लिए इस आदेश के तारख से 3 वर्ष का कालावधि के लिए निरह किया जाता है।

सारणी

क.सं.	निर्वाचन क. विशिष्टियां	लोक सभा निर्वाचन क्षेत्र का क्रम सं. और नाम	निर्वाचन लड़ने वाले अभ्यर्थी का नाम व पता	निरहता का कारण
1	2	3	4	5
2.	लोक सभा के लिए साधारण निर्वाचन, 1984 (महाराष्ट्र)	4-बम्बई दक्षिण	श्री जहोर अम्बाम रिजवा, माखवाड़ी बिल्डिंग, 105-निगलमाडा रोड, बम्बई-400009	निर्वाचन व्ययों का कोई भी लेखा दाखिल करने में असफलता।
3.	-वह-	-वह-	श्री दादासाहेब पावले, 33-जे, मुगलान क्रॉस लेन, गोरगांव, बम्बई-400004	-वह-
4.	-वह-	-वह-	श्री रमेश वं. महता, 30-ज, बोमानज लेन, (बाजार गेट के पश्चात्) फायर ब्रिगेड, का फोर्ट, बम्बई-400001	-वह-
5.	-वह-	-वह-	श्री गुलाब उगाधाय, 48-II, भोइवाड़ा लेन, भुलेश्वर, बम्बई-400002	-वह-

[सं. 76/महा./85(2-5)]

New Delhi, the 7th August, 1985

ORDER

O.N. 53.—Whereas the Election Commission is satisfied that the contesting candidates specified in column (4) of the Table below at the General Election to the House of the People as specified in column (2) and held from the constituency specified in column (3) against their names have failed to lodge any account of their election expenses at all as shown in column (5) of the said Table as required by the Representation of the People Act, 1951 and the Rules made thereunder;

And whereas, the said candidates, even after due notice, have not given any reason or explanation for the failure and the Election Commission is satisfied that they have no good reason or justification for the said failure.

Now, therefore, in pursuance of section 10-A of the said Act, the Election Commission hereby declares the persons specified in column (4) of the Table below to be disqualified for being chosen as, and for being, a member of either House of the Parliament or of the Legislative Assembly or Legislative Council of a State for a period of three years from the date of this order.

TABLE

S.No.	Particulars of election	S.No. & Name of the Parliamentary Constituency	Name and address of the contesting candidate	Reason for disqualification
1	2	3	4	5
2.	General Election to the House of the People, 1984. (Maharashtra State)	4-Bombay South	Shri Zaher Abbas Rizvi, Marwadi Building, 105-Nishanpada Road, Bombay-400009.	Failure to lodge any account of election expenses.
3.	-do-	-do-	Shri Dadasaheb Powle, 33-J, Mugbhat Cross Lane, Goregaon, Bombay-400004.	-do-
4.	-do-	-do-	Shri Ramesh V. Mehta, 30-G, Bomanji Lane, Behind Bazargate, Fire Bridgade, Fort, Bombay-400001.	-do-
5.	-do-	-do-	Shri Subhash Upadhyay, 48-II, Bhoiwada Lane, Bhuleshwar, Bombay-400002.	-do-

[No. 76/MT/85(2-5)]

नई दिल्ली 16 अगस्त, 1985

आदेश

आ. अ. 54-निर्वाचन आयोग का नमस्तेन हो गया है कि लोके के स्तम्भ (2) में यथा विनिर्दिष्ट लोक सभा/विधान सभा के निर्वाचन के लिए जो स्तम्भ (3) में विनिर्दिष्ट निर्वाचन-क्षेत्र से हुआ है, स्तम्भ (4) में उनके नामा निर्दिष्ट निर्वाचन लड़ने वाला प्रत्येक अभ्यर्थी, लोक प्रतिनिधित्व अधिनियम, 1951 तथा तद्वत बनाए गए नियमों द्वारा अपेक्षित उक्त सारण के स्तम्भ (5) में यथा उपदिष्ट रूप में अपने निर्वाचन व्ययों का कोई भी लेखा दाखिल करने में असफल रहा है;

और उक्त अभ्यर्थियों ने प्रत्येक सूचना दिए जाने पर भी उक्त असफलता के लिए या तो कोई कारण अथवा स्पष्टीकरण नहीं दिया है या उनके द्वारा दिए गए अभ्यावेदनों पर, यदि कोई हो, विचार करने के पश्चात् निर्वाचन आयोग का यह समाधान हो गया है कि उनके पास उक्त प्रसफलता के लिए कोई पर्याप्त कारण या न्यायोचित्य नहीं है;

अतः अब, निर्वाचन आयोग उक्त अधिनियम के धारा 10-क के अनुसरण में लोके के सारण के स्तम्भ (4) में विनिर्दिष्ट व्यक्तियों को संसद के किम् भी सदन के या किन्तु राज्य की विधान सभा अथवा विधान परिषद् के सदस्य चुने जाने और इन्हीं के लिए इस आदेश को तारीख से तन वरि के कालावधि के लिए निर्दिष्ट घोषित करता है।

सारण.

क्र.स.	निर्वाचन का विवरण	निर्वाचन-क्षेत्र का क्रम सं. और नाम	निर्वाचन लड़ने वाले अभ्यर्थी का नाम	निरर्हता का कारण
1	2	3	4	5
1.	लोक सभा का साधारण निर्वाचन	3-वडातारा मसूदा निर्वाचन-क्षेत्र	श्री बा. एम. शास्त्री, चेहवथ, थाया, डाक. केंद्र, पिन-673522 (केरल)	विधिनुसार लेखा दाखिल करने में असमर्थ रहे।
2.	लोक सभा का साधारण निर्वाचन	4-काले कट संकुट निर्वाचन-क्षेत्र	श्री पं. ओ. जं. नाम्बियार, स्वतंत्र भवन, डाक मं. नानावड, व्यनाड जिला (केरल)	विधिनुसार लेखा दाखिल करने में असमर्थ रहे।
3.	केरल विधान सभा के लिए उप-निर्वाचन	128-प्रिटिगल विधान सभा निर्वाचन-क्षेत्र	1. श्री एन. उनलुई, धारुविला वडू, मुदापुरम डाकघर, चिंगयिनकिल, त्रिवेन्द्रम जिला, केरल	खाता दाखिल नहीं किया।

1	2	3	4	5
3. केरल विधान सभा के लिए उप. व. चुन (न. री.)			2 श्री एन. मोहनम् पुल्लन्थारा, पारिजत्तोथारा डोकवर, पठनमथिडा विना, केरल। 3. श्री एफ. एन. ड. विलायिल पृथेनवु मुद्रापुल्लम डोकवर, चिरायिन्किल, केरल 4. श्री प्रभाकरन्, मन्नारा वीडु, विलायिममुला, अट्टिंगल डोकवर, लिवेन्दम विना, केरल	याता दखित ह. नहीं किया। -वह- -वह-

[च. 76/केरल- लो. म /85(6-11)]

आदेश से.

धर्मशिर सचिव

New Delhi, the 16th August, 1985

ORDER

O N. 54.—Whereas the Election Commission is satisfied that each of the contesting candidates specified in column (4) of the Table below at the election to the House of the People/Legislative Assembly as specified in column (2) and held from the constituency specified in column (3) against his name has failed to lodge an account of his election expenses in the manner/has not lodged the account at all as shown in column (5) of the said Table as required by the Representation of the People Act, 1951 and the Rules made thereunder;

And, whereas, the said candidates have either not furnished any reason or explanation for the said failure even after due notice or the Election Commission, after considering the representations made by them, if any, is satisfied that they have no good reason or justification for the said failure;

Now, therefore, in pursuance of section 10A of the said Act, the Election Commission hereby declares the persons specified in column (4) of the Table below to be disqualified for being chosen as, and for being, a member of either House of the Parliament or of the Legislative Assembly or Legislative Council of a State for a period of 3 years from the date of this order.

TABLE

S.No.	Particulars of election	S.No. & Name of constituency	Name of the contesting candidates	Reason for disqualification
1	2	3	4	5
1.	General Election to the House of the People.	3.-Ba lagara Parliamentary Constituency	Shri B.M. Shashtri, Cheruvath, Thaya, P.O. Keezhoor, Pin-673522 (Kerala)	Failed to lodge the account in the manner.
2.	-do-	4.- Calicut Parliamentary Constituency	Shri P.O.G. Nambiar, Swatantra Bhavan, P.O. Meeenangadi, Wynad District (Kerala)	-do-
3.	Bye-election to the Kerala Legislative Assembly	128.- Attingal Assembly constituency	1. Shri N. Umarudeen, Gharuvila Veedu, Mudapuram P.O., Chirayinkil, Trivandrum District, Kerala. 2. Shri N. Mohanan, Pullanthara, Padijattothara P.O., Parbanamthitta Distt, Kerala. 3. Shri F. Rasheed, Vilayil Puthenveedu, Mudapuram P.O., Chirayinkil, Kerala. 4. Shri Prabhakaran, Mannara Veedu, Vilayilmoola, Attingal P.O., Trivandrum Distt, Kerala.	Not lodged the account at all. -do- -do- -do-

No. 76/KL-HP/85(6-11)]

By Order,
DHARAM VIR, Secy.

नई दिल्ली, 20 अगस्त, 1985

अधिसूचना

आ.सं. 55.— 1985 की निर्वाचन अधीन संख्या 7 में उल्लेखित उच्च न्यायालय (लखनऊ बेंच) के तारीख 6-5-1985 के आदेश का लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 की उपधारा (क) के अनुसरण में, निर्वाचन प्रयोग एमद्वारा प्रकाशित करने हैं।

(सं० 82/उ०प्र०/सं० 7/85(लखनऊ))

आदेश से,

जे० सी० चाँधरी, सचिव सचिव

New Delhi, the 20th August, 1985

NOTIFICATION

O.N. 55.—In pursuance of the sub-section (a) of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the judgement dated the 6-5-1985 of the High Court of Judicature at Allahabad, Lucknow Bench, in Election Petition No. 7 of 1985.

[No. 82/UP-HP/7/85(LKW)]

By Order.

J. C. CHAUDHARY, Under Secy.

A.F.R. No. 102/85.

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH, LUCKNOW

Election Petition No. 7 of 1985

Bhagauti Prasad Dixit 'CHOREWALA' —Petitioner,
Sri Rajiv Gandhi —Respondent

Counsel for Petitioner—S/Sri Nand Lal Jaiswal,
Satish Chandra Jaiswal & Nirmal Rani.....R Gupta
Counsel for Respondent :—S/Sri V. K. Chaudhari &
Narain

Lucknow; :

Dated— 6-5-1985

Hon'ble Kamleshwar Nath, J.

This is an election petition under Section 80 of the Representation of the People Act, 1951 (for short the Act) for a declaration that the election of respondent Sri Rajiv Gandhi to the Lok Sabha (House of People) from '25-Amethi Parliamentary Constituency', District Sultanpur, is void.

The petitioner, Bhagauti Prasad Dixit 'Ghorewale' was one of the several candidates for the purpose. In the result declared on 29-12-1984, after the poll, the respondent was declared elected by a margin of more than three lakhs of votes against his closest rival Mrs. Maneka Gandhi. The Petitioner, amongst others, consequently lost the election.

The validity of the election has been challenged on the following grounds :—

1. The respondent married an Italian lady and acquired properties in his own name as well as in the name of his wife Mrs. Sonia Gandhi in Italy, in consequence of which the respondent would be deemed to have ceased to be an Indian citizen under Section 9 of the Citizenship Act. That, according to the petitioner constitutes a disqualification under Article 102(1)(d) of the Constitution of India. These allegations were set out in Paras 7 to 13 of the petition.

2. At the time when the election was held, the respondent continued to be a member of the Parliament which, till then, had not been dissolved and since he was drawing his salary, he held an office of profit, within the meaning of Article 102(a) of the Constitution and, therefore, was disqualified from being chosen as a member of the Parliament. These facts are stated in Paras 14 to 16 of the election Petition. According to the petitioner a person to be appointed as Chief Election Commissioner should be qualified to be a Judge of the Supreme Court of India, while Sri R. K. Trivedi belonged to the cadre of the I.A.S. only. The notification of the elections under Section 14 of the Act and all subsequent proceedings of the election, without dissolving the Parliament, thus was contrary to law and the entire election was vitiated. These facts are set out in the petition in Paras 17 to 20. The first and second grounds fall under Section 100(1)(a) of the Act, the third ground falls under the provisions of Section 100(1)(d)(iv) of the Act and for that reason it was prayed by the petitioner that the election of the respondent be declared void.

The respondent filed C.M. An No. 16(E) of 1985 under Order 6 rule 16 C.P.C. with a prayer to strike out the above described paragraphs of the election petition and to dismiss the election petition as one not disclosing a cause of action.

The petition filed C.M. An. No. 20(E) of 1985 in reply to the respondents said application. This order governs these two applications, and petitioners C.M. An. No. 37(E) of 1985 for serving interrogatories on the respondent.

Sri L. Jaiswal has appeared on behalf of the petitioner and Sri S. C. Maheshwari has appeared on behalf of the respondent. They have been heard at length.

In respect of the first ground of attack, consisting of Paras 8 to 13 of the election petition, the contention of the learned counsel for the respondent is that the allegations made are reckless, irrelevant and untenable in facts and law that the respondent did not voluntarily acquire the citizenship of another country, that indeed the respondent's wife has acquired Indian citizenship and was an Indian citizen at the time of elections, and that the respondent had not suffered the alleged disqualifications. It is also urged on behalf of the respondent that it is not for this Court to decide the question of citizenship of the respondent because under Section 9(2) of the Citizenship Act, 1955, it must be decided by the Central Government.

It appears to me that the competence of this Court decide the question of citizenship of the respondent clearly follows from the provisions of Section 100(1) (a) of the Act. The Representation of the People Act, 1951 is a special Act, which governs the determination of all disputes regarding the election of a person to the Parliament or a State Legislature and all the rights of the parties must be found within the four corners of that Act. This position would be clear from the cases of (1) Surinder Singh v. Hardial Singh and others (1985) 1 Supreme Court Cases 91 and (2) Arun Kumar Bose v. Mohd. Furkan Ansari and others (1984) 1 Supreme Court Cases 91. Section 100(a) of the Act clearly says that subject to the provisions of sub-section (2) of that Section, the High Court shall declare the election of the returned candidate to be void if it is of the opinion "that on the date of his

election a returned candidate was not qualified or was disqualified, to be chosen to fill the seat under the Constitution or this Act." The question of qualification or disqualification of the returned candidate, in accordance with the provisions of the Constitution, is, therefore, a matter specifically within the purview of the High Court considering it in an election petition. The provisions of Section 9(2) of the Citizenship Act 1955 are a creation of the powers of Parliament as envisaged under Article 10 and 11 of the Constitution of India. The loss of Indian citizenship, on voluntary acquisition of citizenship of a foreign State, is envisaged in Article 9 of the Constitution. That constitutional provision, so to say, has only been elaborated by Section 9(1) of the Citizenship Act 1955 which says, inter alia that any citizen of India who by naturalisation, registration or otherwise voluntarily acquires the citizenship of another country, shall upon such acquisition cease to be a citizen of India. Since these matters shall have to be considered while determining the qualification of a candidate under Article 102(1) (d) of the Constitution, read with Section 100(1) (a) of the Act, the provisions of Section 9(2) of the Citizenship Act, 1955 must yield to the provisions of the Act and the Constitution. The objection on behalf of the respondent, therefore, that the question could be decided only by the Central Government and not by this Court fail. Reliance by the learned counsel for the respondent on the decision dated 24th July, 1984 of the Supreme Court in Civil Appeal No. 13339(N) of 1971 (The State of U.P. v. Mohammed Din & Ors.) and Civil appeal No. 2044 (N) of 1971 (The State of U.P. v. Abdul Rashid & Ors.) is misplaced, because the question there related to the jurisdiction of the civil courts in a suit for declaration of rights of citizenship; it did not arise in a case before the Court of special jurisdiction like the present case. In my opinion, the question of alleged loss of citizenship by the respondent on the ground of alleged acquisition of citizenship of Italy is open for decision by this Court in this election petition.

However, learned counsel for the petitioner has not been able to show that merely because the respondent married an Italian lady or had acquired, if at all, properties in Italy, he could be deemed to have voluntarily acquired the citizenship of Italy in consequence of which he might have lost his citizenship of India under Article 9 of the Constitution or Section 9(1) of the Citizenship Act 1955. The Act of marrying or acquiring property in a foreign State does not constitute an act of naturalisation, registration or 'otherwise voluntary acquisition' of citizenship of a foreign State.

Learned counsel for the petitioner urged that the question as to how the respondent voluntarily acquired the citizenship of Italy is a matter which could be settled only on the evidence at the time of trial. It is urged that for this purpose it was incumbent upon the respondent to file a written statement stating the relevant facts. In particular, learned counsel for the petitioner filed C.M. An. No. 37(E) of 1985 in this Court in the course of his arguments on 30-4-1985 for leave to serve interrogatories upon the respondent to answer certain questions. In substance, the questions seek the respondent's statement about when and where he married Mrs. Sonia Gandhi, whether at the time of

marriage the citizenship of the respondent and his wife was one and the same, under what provision of law or custom of the country the marriage was performed and on what date Mrs. Sonia Gandhi obtained Indian Citizenship. The respondent was further desired to indicate whether he had acquired any property in his or his wife's name in Italy and whether in the documents executed for acquisition of those properties, the respondent had specified his citizenship as Indian. The prayer to serve interrogatories has been opposed by the learned counsel for the respondent who, on the contrary, contends that on the own showing of the petitioner he did not know 'material facts' regarding the question of acquisition of the citizenship of Italy by the respondent for which purpose the interrogatories are roving and fishing enquiry. Learned counsel for the petitioner says that the facts, in respect of which interrogatories are sought to be served, are within the special knowledge of the respondent and, therefore, the petitioner was in no position to state about them. It appears to me that the necessity of setting forth material facts under section 83(1) (a) of the Act by the petitioner is not relieved by the fact that some of the facts may be within the special knowledge of the respondents. In the first place, there is no specific pleading by the petitioner that the respondent lost his Indian Citizenship in any manner other than by marrying a lady of Italian nationality and acquiring some properties in Italy. The pleading has been put up in Para 9 of the petition in the following words :—

'That on account of his marriage with a lady of Italian nationality his citizenship of India shall be deemed to have been ceased under the provisions of Section 9 of the Citizenship Act.' (Emphasis supplied).

The reason of loss of Indian citizenship thus is specified to be only the respondent's marriage. In Para 11 of the election petition it was, however, said that the respondent's marriage 'shall be deemed to have been performed under the prevailing law of Italy and hence without losing the Indian Citizenship, the said marriage could not be performed.' (Emphasis supplied). Judicial notice could be taken of any law prevailing the learned counsel for the petitioner to produce the law at the time of hearing. In the verification clause of the election petition this paragraph is stated to be believed to be true on legal advice received from the counsel. In the absence of an elucidation of the so-called 'prevailing law of Italy', the pleading is vague. It is in this context that the petitioner went on to say in Para 12 of the election petition that the citizenship of the respondent 'therefore stood terminated'. Learned counsel for the respondent correctly contends that it was necessary for the petitioner to set out when and how the respondent 'voluntarily acquired' the citizenship of Italy as the statement of a material fact under Section 83 (1) (a) of the Act. The allegation, therefore, of the respondent's voluntarily acquiring the citizenship of a foreign State and thereby losing the citizenship of India is vague, ambiguous and unintelligible and, therefore, embarrassing within the meaning of Order 6 rule 16(b) C.P.C. According to Webster, III New International Dictionary, 1971 Edition, Volume I at page 739, the expression 'embarrass' means 'to place in doubt, perplexity or difficulty.' It appears to me that a pleading which is ambiguous or

unintelligible or which contains vague, unnecessary or irrelevant allegations, is said to be embarrassing. In the Case of *Davy v. Currett* (1878) 7 Ch. D. 473 the following observations at page 483 are significant :—

"Now nothing is more embarrassing to a defendant than a number of statements which may be irrelevant and which he, therefore, does not know what to do. Almost every statement in this claim appears calculated to embarrass the defendant in ascertaining what is the case which he has to meet."

It appears to me that in the present case, the allegation in the petition that the respondent had voluntarily acquired the citizenship of Italy, for the purposes of his marriage, is extremely vague, ambiguous and unintelligible, it is clearly embarrassing and cannot be permitted to stand. The other reason of loss of Indian citizenship, apart from the fact of marriage with a lady of Italian nationality or acquiring some properties in Italy, has no foundation in law and is clearly frivolous within the meaning of clause (a) of Order 6 rule 16 C.P.C. The expression 'frivolous' has been described to mean "of little weight or importance; having no basis in law or facts"—Webster III New International Dictionary, 1971 Edition, Volume I, at page 913. In the ultimate analysis therefore, the petitioner's pleading of the respondent's disqualification is embarrassing and frivolous and having regard to the provisions of Order 6 rule 16 CPC cannot be permitted to stand.

In respect of the petitioner's plea of the respondent's disqualification for the reason of his holding an office of profit under the government, being a member of the Parliament at the time of election, as set out in Paras 14 and 15 of the election petition, the contention of learned counsel for the respondent is that the allegations are wholly untenable, misconceived and reckless. Learned counsel for the petitioner says that a member of the Parliament draws salary from the government and, therefore, holds an office of profit under Article 102(1)(a) of the constitution. According to Article 102(1)(a) of the constitution a person is disqualified for being chosen as, and for being, a member of either House of Parliament "if he holds any office of profit under the Government of India—Other than an office declared by Parliament by law not to disqualify its holder." Learned counsel for the petitioner refers to clause (2) of Article 102 which says that a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State by reason only that he is a Minister. In this very context he also refers to the Parliament (Prevention of Disqualification) Act, 1959, where Section 3 contains a declaration that the office mentioned thereunder "in so far as it is an office of profit under the Government of India" or the Government of any State shall not disqualify the holder thereof for being chosen as, or for being, a member of Parliament. The list subjoined to the section describes "any office held by a Minister, Minister of State or Deputy Minister for the Union or for any State, whether ex officio or by name" several other clauses describe several other varieties of offices. The argument is that every Minister, Minister of State or Deputy Minister is a Member of

Parliament and since Article 102(2) of the Constitution excludes a Minister from the category of a persons holding an office of Profit under the Government and similarly Section 3 of the Parliament (Prevention of Disqualification) Act 1959 excludes any office, held by a Minister etc., to be an office of profit under the Government, but similar exemption has not been accorded to a member of the Parliamentary, it should follow that the law recognised a member of the Parliament to be a persons holding an office of profit under the Government. Learned counsel for the respondent says that a Minister, a Minister of State or a Deputy Minister is the holder of an office, and since that office is one under the Government, it have been an office of profit under the Government, but for the exemption accorded by the above-mentioned Provisions of the Constitution, and The Parliament (Prevention of Disqualification) Act, 1959. He contends that the office of a mere member of Parliament is not an office under the Government because he is only a member of the Central Legislature which is independent of the executive to which the Government belongs. The contention of learned counsel for the respondent, in my opinion, seems to be correct. Part V of the Constitution of India deals with the Executive in Chapter I and with the Parliament in Chapter II. The constitution of the Executive as set forth in Chapter I incorporates the President of India in whom the Executive power of the Union is vested (under Article 53) and a council of Ministers to aid and advise him in exercise of his functions. (Vide Article 74). The Ministers are stated in Article 75(2) of the Constitution to hold office during the pleasure of the President, clause (6) of Article 75 of the Constitution speaks about the salaries and allowances of the Ministers. It is clear from these provisions that ministers are part of the Executive for the purposes of Government. Chapter I does not deal with the role of the Ministers as members of the Parliament only, it does not deal with the members of the Parliament at all.

The provisions regarding Parliament are set out in Chapter II and is stated under Article 79 of the Constitution to consist of the President and the two houses known as Council of States and House of people. Article 80 and 81 of the Constitution specify the number of persons to be the members respectively of the council of States and House of people. The only persons who are described in the constitution of the Parliament to be "officers of the Parliament" are the Chairman and Deputy Chairman of the Council of States (Vide Article 89) and the Speaker and Deputy Speaker of the House of People (Vide Article 93). The remuneration paid to these officers of the Parliament are described as salaries and allowances in Article 97. Apart from these officers, each House of the Parliament has a separate secretarial staff whose condition of service, including recruitment, is governed by law made by the Parliament or until the framing of such law, by rules made by the President vide Article 98.

In this scheme of the officers and Personnel of the Parliament, a member of the Parliament, as such is not visulised to be person appointed by any authority of the Government of India or drawing salary by virtue of any such appointment. Likewise, there

is no concept of the removal of a member of Parliament by any authority in the capacity of his appointing authority, apart from his disqualification under Article 102 of the Constitution or the vacation of his seat under Article 101 of the Constitution. The function of a member of the Parliament, as such, is to sit and take part in the proceedings of the respective Houses which has nothing to do with the functions of the Executive. Indeed, the very disqualification of a person to be chosen and for being a member of either House of the Parliament, on account of holding of any office of profit under the Government, as contemplated under Article 102 of the Constitution, postulates that *ex facie* a member of the Parliament is not a person holding an office of profit under the Government. The mere fact that the members of the Parliament receive salary and allowances will not establish the relationship of master and servant between him and the authority making the payment. The liability of the concerned authority to pay salaries and allowances of a member of Parliament is a statutory liability, either under some Act of the Parliament or by the laws prevailing immediately before the commencement of the Constitution as set forth in Article 106 of the Constitution. The dominant test to determine whether a person holds an office of profit under the Government is to find out as to who is the appointing and removing authority of the officer concerned as pointed out in the case of *Kona Prabhakara Rao v. M. Seshagiri Rao* and another (A.I.R. 1981 Supreme Court 658) (Para 9). It is not shown that the Government of India was the appointing or removing authority of any member of the Parliament. The respondent, therefore, did not suffer from any disqualification to be chosen as a member of the Parliament. Indeed, the petitioner's pleading in this respect is only frivolous and, therefore cannot be permitted to stand.

In respect of the ground of illegal appointment of Sri R. K. Trivedi as Chief Election Commissioner and the alleged consequential illegality in the entire process of election, as set up in paras 17 to 20 of the election petition, the contention of the learned counsel for the respondent is that they are absolutely untenable, irrelevant and have no nexus to the validity of the respondent's election. It is urged that the petitioner has not been able to point out any provision of the constitution of India or of the Act which might have been violated in appointing Shri R. K. Trivedi to be the Chief Election Commissioner. The ground, according to the learned counsel for the respondent should fall within the mischief of section 100(1)(d)(iv) of the Act where, *inter alia*, it is essential for the petitioner to plead that the result of the election, insofar as it concerns the returned candidate, has been materially affected by the alleged illegality in the appointment of Sri R. K. Trivedi. It is pointed out on behalf of the respondent that the petitioner has not set up any such plea.

Learned counsel for the petitioner has not been able to refer to any direct provision in the constitution or in the Act in support of his contention that a person to be appointed as Chief Election Commissioner must possess the qualification of a Judge of the Supreme Court. Only an inferential argument is set up on the basis of Article 324(5) of the Constitu-

tion whose first proviso says that the Chief Election Commissioner shall no be removed from his office, except in like manner and on the like ground as a Judge of the Supreme Court. This proviso, while dealing with the removal, cannot be interpreted to signify a qualification for appointment. Learned counsel for the respondent has correctly pointed out that different provisions of the Constitution relating to different dignitaries of the State, who may be removable in substantially similar manner or circumstances, are required to possess different qualifications for the purposes of appointment. It is pointed out that under Article 124(4) of the Constitution, a Judge of the Supreme Court is not removable from his office except by an order of the President passed after an address of each House of Parliament supported by a specified majority presented to the President in a particular session on specified grounds, and according to the Proviso (b) to Article 217(1) of the Constitution a Judge of the High Court may be removed from his office in the manner provided in clause (4) of Article 124 for removal of a Judge of the Supreme Court. Despite this identity of the procedure for removal, the qualification for appointment of a person as a Judge of the Supreme Court under clause (3) of Article 124 is substantially different from those for appointment of a person as a Judge of the High Court under clause (2) of Article 217 of the Constitution. There is thus substance in the contention of the learned counsel for the respondent that the mere provision of the necessity of applying the same procedure for removal of the Chief Election Commissioner from his office as that for a Judge of the Supreme Court, does not establish that the qualification for appointment of a person as Chief Election Commissioner should be the same as for that of a Judge of the Supreme Court. It is not shown, therefore, that there has been a violation of the provisions of the constitution or of the Act in making the appointment of Sri R. K. Trivedi as the Chief Election Commissioner of India which could be a ground for vitiating the election of the respondent under section 100(1)(d)(iv) of the Act. Further, as already pointed out, the petitioner has not pleaded that the supposed illegality in the appointment in question has materially affected the result of the election insofar as it concerns the respondent within the meaning of the said provision. The pleading on this point by the petitioner has no basis in law or fact and is, therefore, frivolous.

These are all the grounds on which the petitioner has challenged the validity of the election of the respondent. For reasons stated, the entire pleadings of the grounds, contained in paras 7 to 20 of the election petition, are hit by the mischief under order 6 rule C.P.C. and, therefore, must be struck out.

Learned counsel for the petitioner, however, raised two points in this connection. In the first instance, it was urged that the respondent's C.M. An. No. 16(E) of 1985, under consideration, is no application in the eyes of law because the affidavit in support thereof is contrary to the provisions of order 19 rule 9 C.P.C. which would apply in view, of Article 87 of the Act. It is pointed out that all the paragraphs of the application have been affirmed by the respondent to be "true according to the legal advice received and believed to be true." Learned Counsel for the

petitioner says that this kind of affirmation is not recognised under order 19 rule 9 C.P.C. (Allahabad) which says that except in interlocutory proceedings, affidavits shall strictly be confined to such facts, as the declarant is able of his own knowledge to prove. The rule goes on to say that in interlocutory proceedings, when the particular fact is not within the declarant's own knowledge, but is stated from information obtained from others, the declarant must state the name and address of the person from whom he received such information. Legal advice received, it is contended, is information received and, therefore, it was necessary for the respondent to disclose the name of the legal adviser concerned.

There are several objections to this contention. Firstly, legal advice is not information, information must relate to fact—advice cannot be a fact. Secondly, between a lawyer and his client the communication is privileged and it cannot be forced to be brought on record in view of section 129 of the Evidence Act, the relevant portion of which runs as follows :—

"No one shall be compelled to disclose to the court any confidential communication which has taken place between him and his legal professional adviser—."

If a confidential communication between a person and his legal professional adviser cannot be required to be disclosed, the name of the legal adviser also would be exempt from such a disclosure. Thirdly, the petitioner's own affidavit suffers from the same infirmity in respect of all the material facts, whatever their worth, set out in the petition. In the verification clause of the election petition, Paras 8 to 21 are described as "believed to be true on legal advice received" in the affirmation clause of the affidavit it is stated that the contents of paras 9 to 21, 23, 26 and 27" are believed to be true on the legal advice received from the counsel. "If the affidavit in support of the respondent's C.M. An. No. 16(E)—1985 suffers from non-acceptability for the reason of manner of verification, the petitioner's own petition and affidavit would suffer from the same defect and would be no petition in the eyes of law. The petitioner cannot be permitted to approbate and reprobate.

The learned counsel for the petitioner urged that the respondent was legally bound to file his written statement and was not entitled to make an application under order 6 rule 16 C.P.C. instead and, therefore, the application under order 6 rule 16 C.P.C. does not deserve to be considered. He says that since on 15-3-1985 this court had ordered notice to be issued to the respondent calling upon him, inter alia, to file a written statement, the respondent was bound to obey that order, and since he had not done that, he was not entitled to be heard on the application under order 6 rule 16 c. p. c. This contention cannot be accepted for several reasons.

In the first instance, a motion for striking out of the pleadings under order 6 rule 16 c.p.c. is capable of being made "at any stage of the proceedings." In the second place, Rule 5 of Chapter XVA of the Rules of Court visualizes a notice to the respondent "to appear and answer the claim on a date to be specified." "The Rule goes on to say that such notice

shall" also direct that if he wishes to put a defence he shall file his written statement—." It seems that in view of this provision the direction to appear and answer the claim is not necessarily the one to file a written statement at once, the option to file a written statement is left with the respondent. That is the precise direction contained in this court's order dated 15-3-1985. As such, having regard to the clear language under order 6 rule 16 C.P.C. the respondent was at liberty to file an application for striking out the pleadings in the first instance rather than file a written statement.

The last point urged by the learned counsel for the petitioner is that if, on account of the striking out of the petitioner's pleadings, the petition may not be found to disclose a cause of action, the order of rejection of the petition under order 7 rule 11 C.P.C. could be passed at the trial stage and not at any other stage. The contention is that when a petition is admitted it cannot be rejected, and the petition itself has to proceed to the merits when it might entail dismissal. Learned counsel for the petitioner has referred to a Allahabad decision in the case of Smt. Kalawati Devi v. Chandra Prakash and others (A.I.R. 1959 Allahabad 37) and another case of Gujarat in Devnarayan Ramkumar Tewari v. State of Bombay now Gujarat and another (1963 Guj. 37). It would be enough to point out that in the case of Ruplal Sathi v. Nachchatter Singh (1982) 3 S.C. Cases 487 the Supreme Court has said that in view of section 87(1) of the Act, the provisions of order 7 rule 11 CPC would apply, although the rule would not justify the rejection of a part of the election. In the case of Madan Lal v. Sargham Haider and others (A.I.R. 1958 Allahabad 956) a Division Bench of this Court held that after striking out of the pleadings in the election petition, the petition itself is liable to be dismissed on the ground that it did not disclose any cause of action and the dismissal would be one on merits under Section 98 of the Act. In the case of Hardwari Lal v. Kanwal Singh (A.I.R. 1972 Supreme court 515) Para 23) it has been pointed out that since an election petition has to be tried as nearly as may be in accordance with the code of civil procedure, in view of section 87 of the Act, it is liable to be dismissed like a suit which does not furnish a cause of action. It is not necessary in view of this legal position to direct that the election petition be rejected under order 7 rule 11 CPC. the proper direction is to dismiss the election petition under section 98 of the Act.

In view of what has been stated above, C.M. An. No. 16(E) of 1985 is allowed, the petitioner's objection there to contained in C.M. An. No. 20(E) of 1985, and C.M. An. No. 37(E) of 1985 for service of interrogatories upon the respondent are dismissed, paras 7 to 20 of the election petition are struck out.

The petitioner shall pay the costs of the respondent. disclose a cause of action.

The petitioner shall pay the costs of the respondent.

sd/-K. Nath
6-5-1985.

New Delhi, the 26th August, 1985

O.N. 56.—The following is published for general information.

Notification U/S 109 of the Representation of People Act 1951

FORM NO: 1

In the High Court of Judicature of Andhra Pradesh at Hyderabad

APPLICATION NO 112 of 1985

IN

ELECTION PETITION NO. 2 of 1985

Battepati Sivaramaiah

Petitioner.

Vs.

Puchalapalli Penchalaiah

Respondent

Where as an application No. 112 of 1985 for leave to withdraw the Election Petition No. 2 of 1985 (Battepati Sivaramaiah Vs. Puchalapalli Penchalaiah) Pending before this High Court, has been presented by the above named petitioner Battepati Sivaramaiah under Sub-Section 1 of Section 109 of the Representation of the peoples Act, 1951.

Now, therefore, the High Court of Andhra Pradesh Hyderabad, in Pursuance of the provisions of Sub-section (2) of section 109 of the said Act, hereby publishes this notice for leave to withdraw the Election petition and fixes the 16th day of August 1985 for the hearing of the aforesaid application No. 112 of 1985 at the High Court of Andhra Pradesh at 10-30AM on the said date or as soon thereafter as the business of the High Court may permit.

High Court of Andhra Pradesh Hyderabad.

Sd/-

REGISTRAR (JUDL)

(N. SUBBA RAJU)

[No. 82/AP-HP/2/85/2628]

P. GUARUSWAMY, Section Officer
Election Commission of India